IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 217 OF 2006

SANJITA UDAISING RANE SARDESSAI ....Petitioners
AND ANR.,

Versus

ARUNA DEVI N. GAIKWAD AND 5 ORS., ...Respondents

Mr. C. Mascarenhas, Advocte for the Petitioners.
Mr. M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh Usgaonkar, Advocate for the Respondents.

Coram:- SMT. RANJANA DESAI, J.

Date:- 16th June, 2006

P.C.:

The present Writ Petition arises out of Inventory proceedings. The case of the present petitioners is that by Relinquishment Deed dated 1st June, 1987 respondent Nos.1 and 3 have relinquished their share.

2. The case of respondent Nos.1 and 3 is that on 28th May, 1987 they had entered into an agreement of sale with their brothers, thus accepting the inheritance.

3. By order dated 05.07.1999 the learned Judge accepted the contention of the petitioners. He held that the deed of relinquishment is valid. The said order was challenged by the respondents in Appeal from Order No.41/99. This Court disposed of the same on 11th July, 2003 holding that the trial Court had not considered the effect of agreement dated 28th May, 1987. The matter was remanded to the trial Court, with a direction that the said issue be reconsidered after hearing the parties and fresh order be passed. After remand, the trial Court heard the parties on 18h July, 2005. The operative part of the trial Court's order reads thus :-

" On the aspect whether Aruna and Lavina daughter of Vijaimala R. Dessai have relinquished their shares - the matter is posted for inquiry.

The amount pertaining to 1/5th share of Aruna and 1/5th share of Lavina in Execution Application No.17/95 pending in the Court of Civil Judge, SEnior Division, Quepem, shall be withheld, as the amount in dispute pending inquiry.

Pending inquiry in the remaining amount - Rajan, C.C. shall be paid 1/5th of the amount; Meena shall be paid 1/5th amount and Nitesh shall be paid 1/5th of the amount.

After the inquiry, it shall be decided whether Rajan and Nitesh are entitled to 4/5th of the amount and Meens is entitled for 1/5th or Rajan and Nitesh have 2/3rd and Meena 1/3rd of the amount - withheld. "

4. Thereafter the petitioners sought clarification of the said order. The learned Judge by his Order dated 21.09.05 held that no clarification is necessary. He however observed thus :-

" If the Will is accepted, the shares of Udaisingh Rane and his wife becomes 1/10th. If for any reason the Court find that Will is not binding, then, his share becomes 1/5th. Further, if the Court holds that relinquishment deeds are valid then share of Udaisingh Rane and his wife jumps from 1/5th to 1/3rd. There are also objections taken by Udaisingh Rane/advocate Shri C. Mascarenhas to the list of assets which are yet pending in the file. In such a situation, it is Meena alias Sangeeta and Udaisingh Rane who claim that their share from 1/10th moves to 1/3rd. So, it is upon them to show to the Court, how their share becomes 1/3rd and hence in this inquiry, the burden lies on Udaisingh Rane and Meena Rane. "

5. The learned counsel for the petitioners contended that the order of the learned Judge travels beyond the order passed by this Court while remanding the matter. The learned Judge erred in placing bruden on the petitioners and therefore this order may be set aside.

6. In my opinion it is not necessary to interfere with the impugned order. All that the trial Court has to ensure is compliance of the order passed by this Court. It will always be open to the petitioners in case they are aggrieved by the order passed after the inquiry is conducted by the trial Court to challenge that order. In case as contended by the learned counsel for the petitioners the petitioners feel that the burden was wrongly placed on them, it will be open to the petitioners to take up that point while challenging the order of the trial Court.

7. Hence no interference is necessary. Needless to say that all legal contentions of both sides are kept open. Stay, if any, stands vacated. The parties to appear before the trial Court on 15th July, 2006 at 10.00 a.m.

Petition is disposed of in the aforesaid terms.

SMT. RANJANA DESAI, J.

sl.